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2012 SEP 24 PM 4:27

M.L. HATCHER, CLK
U.S. BANKRUPTCY COURT
W.D. OF WA AT SEATTLE
BY__________DEP CLK.

ADAM R. GROSSMAN
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Judge: Marc L. Barreca
Chapter: 7

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re ADAM R. GROSSMAN	NO. 10-19817 EX PARTE MOTION FOR ENTRY OF ORDERS FOR RELIEF FROM JUDGMENTS OR ORDERS RE: DOCKET NO. 423 ORDER DISALLOWING CLAIMS

1. TO THE HONORABLE MARC BARRECA, CHAPTER 7 TRUSTEE, AND ALL OTHER PARTIES OF INTEREST: Adam R. Grossman ("Movant") moves this honorable Court for orders of relief from judgments and orders for Docket Items No. 423, Order Disallowing Claims.
2. As is described below, this motion seeks relief from these orders pursuant to Rule 9024(a) Clerical Mistake, Rule 9024(b)(3) Fraud, Rule 9024(b)(4) Void Judgments, Rule 9024(b)(6) Any Other Reason That Justifies Relief, Rule 9024(d)(3) Fraud Upon The Court.
3. In support of this motion, Movant asserts and alleges the following:

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I. Rule 9024: Relief from Judgment or Order

4. Bankruptcy Rule 9024, analogous to Federal Rule 60, enables this honorable Court to order relief from judgments and orders for several specific reasons and also for "any other reason":

   (a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

   (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

      (1) mistake, inadvertence, surprise, or excusable neglect;

      (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

      (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

      (4) the judgment is void;

      (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or,

      (6) any other reason justifying relief from the operation of the judgment.

   (c) Timing and Effect of the Motion.

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(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to entertain an independent action to relieve a party from a judgment, order, or proceeding; grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

5. Some limitations apply: (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 9024(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by §727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by §1144, §1230, or §1330.

6. Note: Limitation (1) does not apply.

II. Rule 9024(a) Clerical Mistake

7. Proposed order entered by the trustee's counsel Docket No. 422 was filed under Honorable Judge Overstreet despite the Judge assigned to this case being Honorable Judge Marc Barreca.

8. Proposed order entered by the trustee's counsel Docket No. 422 through clerical error proposes an order in which the claim objected to in Docket No. 378 is disallowed despite clearly stated docketed minutes, "Objection is denied."

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9. Proposed order entered by the trustee's counsel Docket No. 422 through clerical error proposes an order in which the claim objected to in Docket No. 380 is disallowed despite clearly stated docketed minutes, "Objection is denied."

10. Proposed order entered by the trustee's counsel Docket No. 422 through clerical error proposes an order in which the claims of passive entities and their controlling managing entities are treated separately. This should be seen as a clerical error. Much like a trust is an entity generally incapable (in California) of being sued, the trustee's attempt to "serve" a trust or to "sue" a trust is understood to be a suit or service upon the trustee. Similarly for a limited partnership, it should be implicit that opposition to objection to the partnership and the general partner are equivalent. Opposition to the managing member(s) and the passive LLC are equivalent. An order which disallows claims one way but not the other is inconsistent and should be considered a clerical error.

III. Rule 9024(b)(3) Fraud

11. The document, "Declaration of Adam R. Grossman I of X" dated August 28, 2012, Docket No. 417 in 10-19817 is hereby incorporated by reference.

12. The document, "Ex Parte Motion For Entry Of Orders For Relief From Judgments Or Orders (Rule 9024)" dated September 17, 2012, Docket No. 112 in 11-01954 is hereby incorporated by reference.

13. 9024(b)(3) allows relief for fraud. The Trustee's attorney has denied that investors in the Tanager Fund LP were defrauded on December 14, 2010. Her analysis is incorrect. All docketed items which rely upon and actually propagate 10(b)-5 securities fraud are requested to be withdrawn pursuant to Rule 9011(b)(4), specifically Docket No. 423.

14. The false and fraudulent representations made to the State Court by Jill Borodin directly and indirectly through her attorney Karma Zaike falsely inflated alleged community property assets. The intended result was to reclassify, as community property, other people's money which attempted to defraud approximately 17 investors who proportionately share any uncorrected losses. The rulings are not binding on Delaware

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entities nor any entity not a party to those Washington State legal actions although accountants generally recommend it is easier, less expensive, and recommended practice to conform to the rulings lacking jurisdiction, to the extent possible, and adjust any incorrect entries with offsetting entries. The fraud was directly related to the proceeds of securities sales and assets purchased with the proceeds of securities sales.[1,2]

15. Movant recalls in kindergarten, his Dad advised, "Money doesn't grow on trees." By this, Movant believes Dad meant that resources are often finite.

16. As a kindergartner, Movant knew that a kindergarten class had finite resources and if one kindergartner took too much other kindergartners would have less; however, at five-years-old Movant had no knowledge of partnerships under the law.

17. As an adult, Movant knows that if one partner took too much other partners would have less similar to what Movant understood in kindergarten; as an adult Movant does know

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[1] Violations of state law RCW 21.20.010 ("Unlawful offers, sales, purchases") are Class B felonies. Jill Borodin and her attorney Karma Zaike agreed in advance to undertake a number of actions, and did so, in the connection with the sale of Tanager Fund LP securities, directly or indirectly, and employed one or more devices, schemes, or artifices to defraud limited partners in the Tanager Fund LP -- including her own children; and, made one or more untrue representations of a material fact and omitted to state a material fact and actively suppressed my statements of a material fact that would have been necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; and, engaged in one or more acts, practices, or courses of business which operated as a fraud or deceit upon other partners in the Tanager Fund LP.

[2] Violations of federal securities law (17 U.S.C. § 240.10b-5 or SEC Rule 10(b)-5: "Employment Of Manipulative And Deceptive Devices") are defined nearly the same. Jill Borodin and her attorney Karma Zaike, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange such as the Chicago Board Options Exchange agreed in advance to undertake a number of actions, and did so, that employed one or more devices, schemes, or artifices to defraud limited partners in the Tanager Fund LP; and, made untrue representations of a material fact and omitted to state a material fact and actively suppressed my statements of a material fact necessary in order to make the statements made, in the light of the circumstances under which were made, not misleading; and, engaged in one or more acts, practices, or courses of business which operated as a fraud or deceit upon other partners in the Tanager Fund in connection with the sale of securities.

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something about partnerships under the law and that a partnership has finite assets. Dad was right: because resources are finite, every other partner loses money and pays for the loss proportionately.

18. As an adult, Movant further knows additional information related to partnerships which become insolvent: under Delaware law (and the law of most states which have adopted RUPA and RULPA such as Washington State), partner distributions are no longer permitted. If attempted or executed, they create substantial liability to the partnership and the distributing partner. Even more liability is created to the receiving partner if a partner receives a distribution from an insolvent partnership with knowledge of the insolvency.[3]

19. The false and fraudulent accounting that has been described in these chambers cannot be interpreted or adjusted in any way to balance. Debits do not equal credits. The proposed order allowing claims by the trustee's attorney absent any motion to allow claims does not balance. It cannot be reconciled to supporting documents. This was described recently by Jeffrey Wells who explained truthfully in these honorable chambers in the hearing on June 1, 2012:

> "At the time of the dissolution, the representation [by Jill Borodin and Karma Zaike] was that this was community property owned by the parties [so] the State Court found [non-community property] was also community property. There was only so much money the Grossmans had. They could only buy one house... there was only enough to buy one house yet the State Court has said both houses were community. There never was that much money by [the marital community]. One of the houses might be community but not both. One of these assets more properly belongs to the Tanager Fund. I'm not here to tell you which." -Jeffrey Wells, June 1, 2012.[4]

and this officer of the court was too polite to make a reference to the utter impropriety of using fraudulent accounting in any way whatsoever, except that he did obtusely remind this honorable Court,

> "The State Court divided up the assets and liabilities of the parties [but] such a division is not binding on the creditors." -Jeffrey Wells, June 1, 2012.[5]

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[3] This issue of law has been reiterated to Stephen Porter, Esq., and Denice Moewes, Esq., who as experienced attorneys were likely aware of the law without being reminded of it.

[4] Unofficial transcript.

[5] Unofficial transcript.

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20. Movant has disclosed that he is not an accountant and relies upon accountants but he can assure this honorable Court that since he will probably be requested to sign-off on financial statements for 2010 and since the penalties under Sarbanes-Oxley for signing false and fraudulent statements are very high, he will never sign off on statements with the same false and fraudulent accounting created by Jill Borodin and Karma Zaike, promoted by Ron Brown and Denice Moewes, and now requested that this honorable Court perpetuate. The statements which are governed by Delaware State law will be different -- and not fraudulent. Movant respectfully and politely and euphemistically argues that perpetuating false and fraudulent accounting by this honorable Court is not proper. Movant respectfully requests this honorable Court to politely decline all such requests to participate in perpetuating fraudulent and false accounting and rather to sanction what is euphemistically referred to as "improper" activity.

21. Movant respectfully requests relief from this honorable Court from judgments and orders based upon fraud pursuant to 9024(b)(3), specifically Docket No. 423.

IV. Rule 9024(b)(4) Void Judgments And Orders

22. The document, "Declaration of Adam R. Grossman I of X" dated August 28, 2012, Docket No. 417 in 10-19817 is again hereby incorporated by reference.

23. The document, "Ex Parte Motion For Entry Of Orders For Relief From Judgments Or Orders (Rule 9024)" dated September 17, 2012, Docket No. 112 in 11-01954 is again hereby incorporated by reference.

24. Chapter 7 Trustee Ron Brown stated under penalty of perjury[6] he did not know whether a clarifying motion "would be have to be filed in State Court or Bankruptcy Court."

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[6] "The question of which Judge the motion should be noted before is one for which I do not have an answer at this time. Without receiving further advice from counsel or court direction, I do not know if the motion would be have to be filed in State Court or Bankruptcy Court." Ron Brown, Docket No. 363.

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Movant respectfully requests this honorable Court to assist the trustee in carrying forth his duties which would be a very difficult task not knowing the answer to this question.

25. The Docket Items in adversarial case 11-01954 regarding Montcrest Drive create an impossible tension of inconsistency that cannot be resolved without using opposite and simultaneous assumptions: they are based on State Court Supremacy to justify the use of the State Court decree of dissolution and simultaneously are based on Federal Supremacy to justify the use of this honorable Court to execute and enforce the State Court orders. The jurisdiction cannot simultaneously lie with both courts. Either the State Court orders are void for lack of jurisdiction thus suggesting the orders of this honorable Court should be vacated for lack of justification; or, the State Court orders are valid for holding jurisdiction and this Court's orders are void for lack of jurisdiction and lack authority to be entered. As Denice Moewes stated in open court, "[I cannot make the representation that this Court has jurisdiction without a finding] that the State Court ruling... is void and does not apply." -Denice Moewes, June 1, 2012.
26. Movant respectfully requests this honorable Court to eschew obfuscation.
27. Movant respectfully requests this honorable Court rule with clarity. Where the law is clear, Movant respectfully requests guidance that is clear.
28. Movant respectfully requests this honorable Court to state with clarity, when true, that the State Court lacks authority create and enforce orders and derivatives therefrom when such orders are void *ab initio* lacking jurisdiction which this Court has clearly shown through its actions that the State Court lacks and this honorable Court holds; in the alternative, Movant requests that orders and judgments which this honorable Court holds remain in the jurisdiction of the State Court should be vacated or recognized as void for lack of jurisdiction -- jurisdiction held and retained by the State Court.
29. Movant respectfully requests this honorable Court to order relief that is fair and just.

V. Rule 9024(b)(6) Any Other Reason That Justifies Relief

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30. Innocent investors deserve protection. In a partnership, any loss caused by the taking of partnership property rightfully owned by a partnership by the misrepresentations to the State Court and perpetuated by this honorable Court will be proportionately distributed, on a temporary basis until recovered, among all partners. The losses will be clawed-back. These investors deserve the protection of this honorable Court.

31. To the extent that this Court is asked to participate in the taking of property as part of a securities fraud, euphemistically referred to as a "dishonorable" activity, due to the deliberate misrepresentations of Jill Borodin and Karma Zaike which have resulted in the ridiculous attempted application of law such as, "[To the extent that you had any interest in the Tanager Fund LP, that interest was entirely awarded... in a dissolution action between two parties in Washington State to which you were not a party.]"[7] Movant respectfully requests this honorable court to decline such participation.

32. This honorable Court should applaud the unsung heroes, many of whom are victims of the securities fraud perpetrated by Jill Borodin and Karma Zaike, who wish to see a speedy resolution of these proceedings and have voluntarily contributed money to hasten these proceedings or have voluntarily waived rights to hasten these proceedings. Many have voluntarily agreed to absorb losses rather than assert their full rights.

33. Lack of action or filings by defrauded investors should not be seen as any sort of tacit agreement that such defrauding is proper or right. It should be seen as a polite attempt to hasten these proceedings for the benefit of all creditors -- as opposed to the lengthening of these proceedings to the ultimate detriment of all creditors as has proved to be the case if the trustee's plan is allowed by this honorable Court to proceed.

VI. Rule 9024(d)(3) Fraud Upon The Court

34. Proposed order entered by the trustee's counsel Docket No. 422 was filed under Honorable Judge Overstreet despite the Judge assigned to this case being Honorable

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[7] Karma Zaike, Opposition to Amicus Brief filed by Joanna Strober

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Judge Marc Barreca. To the extent that this was an honest mistake, this paragraph should be ignored.

35. Proposed order entered by the trustee's counsel Docket No. 422 proposes an order in which the claim objected to in Docket No. 378 is disallowed despite clearly stated docketed minutes, "Objection is denied."
36. Proposed order entered by the trustee's counsel Docket No. 422 proposes an order in which the claim objected to in Docket No. 380 is disallowed despite clearly stated docketed minutes, "Objection is denied."
37. Proposed order entered by the trustee's counsel Docket No. 422 states that no objection to disallowing the claim by the Tanager Fund was received. This is false and is a fraud upon this honorable Court.
38. Proposed order entered by the trustee's counsel Docket No. 422 states that no objection to disallowing the claim by the Ptarmigan Fund was received. This is false and is a fraud upon this honorable Court.
39. The trustee states that all shares of the Tanager Fund LP are controlled by the estate. This is untrue and is a fraud upon this honorable Court. For example, several weeks ago Movant received an unsolicited inquiry from a limited partner regarding that limited partner's position. From the same records that the trustee has been provided, Movant responded that the limited partner had a positive, non-zero position of capital units not yet redeemed.
40. The trustee states that all shares of Terrington Davies Capital Management are controlled by the estate. Accountants are very likely to certify statements to the contrary. Movant is very likely to sign statements to the contrary which, under Sarbanes-Oxley, carry substantial penalties if incorrect.

VII. Request For Relief

41. Movant respectfully requests this honorable Court to order relief that is fair and just.
42. Movant respectfully requests this honorable Court to issue guidance with clarity.

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43. Pursuant to Rule 9024, this honorable Court may act *sua sponte*[8] with or without a hearing -- with or without even this ex parte motion.

44. Pursuant to 11 U.S.C. § 105(a), this Court has "express authorization" to act[9] both with respect to process and subject matter. The purpose of § 105(a) "is to enable the court to do whatever is necessary"[10]:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

45. Movant respectfully requests this honorable Court to vacate Docket No. 423 as fair and equitable relief. In the alternative, Movant resepectfully requests this honorable Court to reconsider the judgment and orders in Docket No. 423 through and indication that a notation for reconsideration will be accepted and heard.

Signed on this 24th day of September, 2012, in Seattle, WA

s/Adam R. Grossman/

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[8] In re Cisneros, 994 F.2d 1462, 1466 & n.4 (9th Cir. 1993).

[9] In re Si Yeon Park, 198 B.R. 956, 966-67 (Bankr. C.D. Cal. 1976); In re Neuman, 71 B.R. 567, 571 (S.D.N.Y. 1987)

[10] Si Yeon Park, 198 B.R. at 967 (internal citation omitted); Garrity v. Leffler (In re Neuman), 71 B.R. 567, 571 (S.D.N.Y. 1987).

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